



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Tom Bakaly, City Manager
Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

Dear Mr. Bakaly:

Thank you for your March 25, 2009 letter regarding matters that we discussed during our meeting in Salt Lake City. It was a good opportunity for us to initiate a dialogue on matters concerning the Silver Creek Watershed area. There are, however, a few issues that we would like to clarify.

In EPA's generic outline on the Agency's approach to assessment and remediation in watersheds, we stressed that our watershed process begins with the identification of the sources of pollutants. Once the most significant sources of contamination are identified, our cleanup program generally focuses first on cleaning up those sources to achieve existing water quality standards. While earlier data available during development of the Silver Creek TMDL indicated *the Judge Tunnel discharge was not a significant source in relation to metal loading from the upper watershed*, based upon upper watershed clean ups and more recent water quality data, the Prospector Drain, Spiro Tunnel and the Judge Tunnel are significant sources and should be addressed now consistent with a watershed based process. To support watershed based efforts there are currently two Silver Creek Watershed groups: the Upper Silver Creek Watershed and the Lower Silver Creek Watershed. Although some of the participants are represented in both groups, the stakeholders that attend have many unique interests. These groups will continue to meet separately, but will also have opportunities to meet jointly to address overall watershed issues.

We want to acknowledge Park City's commitment to water quality, as demonstrated in your recent visioning process and in the City's construction of the biocell to improve the quality of the discharge from Prospector Park. In order to work collaboratively to improve water quality in Park City and downstream, we would like to clarify EPA's view regarding several issues related to these efforts. There has been some discussion in the past in regards to the biocell being a Best Management Practice (BMP) rather than a point source. While the Utah Department of Environmental Quality (UDEQ) has initiated, but not yet completed, efforts to include BMPs for abandoned mine lands in the State's Nonpoint Source Management Plan, the biocell would not be covered as a nonpoint source under this plan. The biocell discharge is clearly a point source.

As a result, such point sources are required to obtain a Utah Pollutant Discharge Elimination System (UPDES) permit. EPA verbally recommended that City officials contact UDEQ for permit application materials. For further background on this issue, we draw your attention to Section 503 of the Clean Water Act, 33 U.S.C. §1362(14) and 40 C.F.R. §122.2, which define a point source as a conveyance from which pollutants are or may be discharged. Watershed sampling events have confirmed releases of pollutants including cadmium and zinc that exceed water quality standards from the Prospector Drain conveyance. The Prospector Drain, Spiro Tunnel and the Judge Tunnel meet the definition of a point source as defined in statute and regulation. A National Pollutant Discharge Elimination System (NPDES) permit is required for all discharges of pollutants from a point source to a jurisdictional water. Operation of a point source discharge without a NPDES permit is a violation of the Clean Water Act.

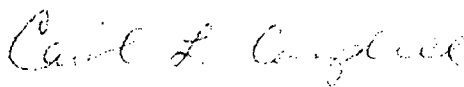
When EPA approved the Silver Creek TMDL it was determined that the submittal included the necessary components of an approvable TMDL, including the analysis of waste load allocations (WLA), load allocations (LA), as well as a margin of safety (MOS). The LA of the TMDL must include the sum of contributions from all nonpoint sources plus background sources. In this TMDL submittal, background sources are reflected in the data as a component of the ambient load not contributed by point-sources. Therefore, background source contributions are captured in the ambient water quality data and are reflected in the aggregate LAs for the TMDLs. A separate allocation for background sources exclusive of the total LA is not required.

In addition, you also expressed concern over the use of a maximum hardness value of 400 mg/L (as CaCO_3) instead of ambient hardness concentrations in calculation of the metals criteria for the Silver Creek TMDLs. The average hardness in the watershed was measured at 484 mg/L (as CaCO_3). A hardness of 400 mg/L was used in calculating both the zinc and cadmium targets for these TMDLs. The use of the 400 mg/L hardness value in calculating the chronic water quality standards for zinc and cadmium in the Silver Creek TMDL submittal was and still is appropriate for the following reasons:

- The National Recommended Water Quality Criteria: 2002 (EPA 822-R-02-047 Nov 2002) states that hardness and inorganic water quality characteristics do not correlate as well for hardness values above 400 mg/L (as CaCO_3) and limited data are available to quantify the relationship between hardness and toxicity above 400 mg/L. Therefore, EPA recommends the use of a default Water Effect Ratio (WER) of 1.0 and a hardness of 400 mg/L for waters with hardness values above 400 mg/L. Alternatively, a site-specific WER may be determined and the actual hardness value may be used for criterion calculation. As site-specific WERs have not been determined for Silver Creek, the use of the 400 mg/L hardness value in the TMDL target calculations is necessary; and
- Utah's Water Quality Standard R317-2-14 *footnote 7* specifically requires the use of 400 mg/L (as CaCO_3) as the maximum hardness value for calculation of hardness-based criteria.

The City should contact UDEQ as soon as possible regarding the permit application process for the Prospector Drain, Judge Tunnel and Spiro Tunnel. EPA would expect that the permit applications for the three point source discharges will be submitted by Park City to UDEQ within 60 days of receipt of this letter. Absent applications within this time frame, EPA will consider its options including follow up by the NPDES enforcement program. EPA appreciates your attention to this matter. If you have any questions, the most knowledgeable persons on my staff are: Kathryn Hernandez (Superfund) at 303-312-6101; Sandra Spence (TMDLs) at 303-312-6947; and Qian Zhang (NPDES Permits) at 303-312-6267. We look forward to working with the City and other local partners toward continued improvement in water quality.

Sincerely,



Carol L. Campbell
Assistant Regional Administrator
Office of Ecosystems Protection and
Remediation

cc: Mayor Dana Williams, Park City
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